HON'BLE MR JUSTICE A. GOPAL REDDY

-

WRIT PETITION NO.22197 OF 1994

DATE:07.03.2006

Between:

Perugu Subba Rao.

..... PETITIONER

AND

State of A.P., rep. by its Secretary,

Revenue Department, Secretariat Buildings,

Hyderabad. And three others.

.....RESPONDENTS

-

-

-

-

-

-

-

-

-

HON'BLE MR JUSTICE A. GOPAL REDDY

W.P. No.22197 OF 1994

ORDER:

The petitioner, who is an excise contractor, was granted contract in respect of Pallapatla group of arrack shops for the excise year 1981-82 and Macherla group of arrack shops for the year 1982-83. The Minimum Guaranteed Quantity ('MGQ') of arrack fixed for the Pallapatla group of arrack shops was 2 lakh bulk litres of arrack but, in the month of September, 1982 as the petitioner failed to lift 12,990 bulk litres of arrack, the same was allotted to some other contractors and from them the issue price, excise duty, transport charges etc., were collected apart from collecting the cost price of Rs.8,573.40 ps from the petitioner in respect of 12,990 bulk litres of arrack, though, the same was not drawn by him. Similarly, the petitioner failed to lift the 44,000 bulk litres of arrack in respect of Macherla group of arrack shops for the excise year 1982-83 and the undrawn quantity of arrack was, however, allotted to other contractors and from them also the charges were collected in addition to collecting the cost price from the petitioner for 44,000 bulk litres. Aggrieved by that, the petitioner filed W.P.No.6578 of 1982 seeking a writ of mandamus directing the respondents not to collect the excise duty, transport charges and sales tax components of issue price on the unlifted quantity of arrack concerning Pallapatla group of arrack shops for the excise year 1981-82. This Court following its earlier judgment of the Full Bench in **Atluri Brahmanandhan v . Tahsildar Gannaram** allowed the said writ petition as prayed for. Thereafter, the Andhra Pradesh

Legislature amended the Andhra Pradesh Excise Act to nullify the effect of the above Full Bench judgment. Section 4 (a) and (b) of the Amendment Act 10 of 1984 provides for the validation of earlier demands made in respect of issue price of short-drawn minimum guaranteed quantity of liquor, which reads as under:

> "4. Validation:- .....
>
> (a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the collection of such price shall for all purposes be deemed to be and to have always been done or taken in accordance with law;
>
> (b) no suit or other proceeding shall be maintained or continued in any court or before any authority for the refund of, and no enforcement shall be made by any court or other authority of any decree or order directing the refund of, any such price which has been collected and which would have been validly collected as if the provisions of the principal Act as amended by this Act had been in force at all material times."

Questioning the validity of the said amendment Act, petitioner and others filed W.P.Nos.751 to 753 of 1985 and the same were dismissed by this Court on 29.1.1985, against which, the Special Leave Petitions filed by the petitioner and others were also dismissed by the Apex Court on 15.4.1993 following its earlier judgment in **State of Andhra Pradesh v. Y. Prabhakara Reddy**, wherein the Full Bench judgment of this Court (1 supra) was reversed. On dismissal of the Special Leave Petitions, the present writ petition is filed contending that the petitioner is not liable to pay any excise duty, sales tax or freight charges in respect of short-drawn arrack for the period from September, 1982 in respect of Pallapatla group of shops for 1981-82 and Macherla group of shops for 1982-83 and the collection of amount from him on a quantity of 44,000 bulk litres is illegal, unconstitutional and contrary to the provisions of the A.P. Excise (Amendment) Act, 10 of 1984 and therefore, the action of the fourth respondent in demanding him to pay the amounts is illegal and without authority of law and consequently sought for a direction to the respondents not to take any coercive steps for recovery of the amounts as claimed.

On behalf of the respondents, a counter affidavit has been filed stating that once the petitioner failed to lift the notified Minimum Guaranteed Quantity of arrack for the two groups of shops, the arrears have been determined and after deducting the cost price paid by the petitioner and the amount received by auction of movables

attached on 27.3.1991, an amount of Rs.61,298.60 ps. is due from the petitioner in respect of Pallapatla arrack group of shops for September, 1982 and Rs.2,00,571.95 ps. is due in respect of Macherla arrack group of shops for July, August and September 1983. It is stated that in view of the amendment effected to Section 23 of A.P. Excise Act, 1968 and as per the judgment of a Division Bench of this Court in W.P.No.6448 of 1984, dated 17.9.1984 the petitioner is liable to pay the arrears amount occurred on two arrack groups along with the interest to the Government. By virtue of amendment to Section 23 of the A.P. Excise Act, 1968, the Government is entitled to collect the arrears amount on short drawn Minimum Guaranteed Quantity of arrack left over by the arrack contractor even prior to the period of 1984 and therefore, the present writ petition filed in view of the dismissal of S.L.Ps. cannot be maintainable.

Learned counsel for the petitioner contends that the Amendment Act, 1984 only validates the collection of issue price which cannot be refunded but in the case of the petitioner, the said amounts have not been collected and therefore, still the Judgment of this Court in **Atluri Brahmanandhan**'s case (1 supra) holds good and hence, the department cannot collect the said amount. He further contends that as the petitioner failed to lift the Minimum Guaranteed Quantity of arrack, the Excise Department is entitled to collect only the cost of the liquor, but not the excise duty, sales tax etc. since no sale was effected.

The contentions of the learned counsel for the petitioner cannot be accepted in view of the authoritative pronouncement of the Apex Court in **Y. Prabhakara Reddy**'s case (2 supra), wherein the Apex Court categorically held that the issue price is always a definite sum per bulk litre of liquor; the notification specifying the issue price does not attempt to split up the issue price into various components such as cost price, excise duty, transport charges etc.; cost price, excise duty and transport charges are not separately and individually charged; and issue price is the sum total of whatever has gone into the price of liquor at the time it is issued and it is a single predetermined definite sum and not the total of separate sum representing so many specified components. The Apex Court further made it clear that even prior to the 1984 amendment, the amount which each of the contractors was required to pay or have adjusted was not excise duty on undrawn liquor, but was part of the price which he had agreed to pay for the grant of the privilege to sell liquor. Following the same, the Apex Court in **State of Orissa v. Narain Prasad** further

held that a person after securing a contract taking into account its terms, cannot later be allowed to assail validity of those terms or the Rules constituting the terms of the contract by invoking the extraordinary jurisdiction of High Court under Article 226 of Constitution of India, and observing so, allowed the appeals preferred by the State of Orissa setting aside the order passed by the High Court.

For the forgoing reasons, I do not see any merit in any of the contentions raised by the learned counsel for the petitioner. Hence, the writ petition fails and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

_____

A. GOPAL REDDY, J

07th MARCH, 2006.

Tsr